UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

800 RIVER ROAD OPERATING
COMPANY, LLC d/b/a CARE ONE AT
NEW MILFORD Case 22-CA-204545

and

1199 SEIU UNITED HEALTHCARE
WORKERS EAST

RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46(a) of the Board's Rules and Regulations, Respondent, 800 River Road d/b/ Care One at New Milford (Respondent or the Center), files the following exceptions to Administrative Law Judge Benjamin W. Green's November 20, 2018 Decision. The specific grounds for these exceptions and citation of authorities are set forth in Respondent's supporting brief.

Exception 1: To the judge's finding that the parties stipulated that the Respondent did not give the Union notice and an opportunity to bargain in advance of any alleged reduction of hours, without also finding that the parties stipulated that the Union never subsequently requested bargaining over any alleged reduction of hours. (Decision, p. 4, lines 31-32).

Exception 2: To the judge's finding that Respondent's counsel indicated at trial an intention to introduce the "full" payroll records for a larger time period. (Decision, p. 4, fn.1).

Exception 3: To the judge's finding that the "payroll records introduced by the General Counsel indicate that employees largely accumulated (including time worked and leave) 40 hours per week before the payroll period in which their hours were allegedly reduced and 37.50 hours

per week during and after the payroll period in which their hours were allegedly reduced." (Decision p. 4, lines 35-39).

Exception 4: To the judge's finding that it "was far more rare for an employee to accumulate less than 39 hours in a week before the alleged change or more than 38.75 hours after the alleged change." (Decision, p. 4, lines 41-43).

Exception 5: To the judge's finding that "[p]ayroll leave deductions were also cited as a basis for evaluating a change in employee work weeks from 40 hours to 37.5 hours." (Decision, p. 5, lines 1-2).

Exception 6: To the judge's finding that "a review of the payroll records of all the employees in question reflect that sick/vacation was largely taken in 8-hour increments before the alleged change and 7.5-hour increments were largely taken after the alleged change." (Decision, p. 5, lines 6-9).

Exception 7: To the judge's finding that facility administrators would particularly hire full-time rehab techs and rehabilitation assistants to work 40 hours per week as exceptions to the general rule that full-time employees would be hired to work 37.5 hours per week. (Decision, p. 5, lines 22-24).

Exception 8: To the judge's finding that Montegari "speculated" that the facility administrator changed Sormani's hours from 40 to 37.5 hours per week as a result of a position change from Receptionist to Unit Secretary. (Decision, p. 5, lines 27-30).

Exception 9: To the judge's finding that "respondent violated Section 8(a)(1) and (5) of the Act by reducing the hours of 20 unit employees." (Decision, p. 6, line 28).

Exception 10: To the judge's finding that "the employees in question largely accrued 40 hours per week before and 37.5 hours per week during or after the payroll period identified by the General Counsel as the period when the change occurred." (Decision, p. 6, lines 23-25).

Exception 11: To the judge's refusal to place any "significance on Montegari's testimony or the wage and benefit summary to the extent they indicate that employees were generally scheduled to work 37.5 hours per week." (Decision, p. 7, lines 1-3).

Exception 12: To the judge's finding that Hegarty's master schedules were not relevant. (Decision, p. 7, fn. 7).

Exception 13: To the judge's finding that "some employees worked 40-hour weeks…." (Decision, p. 7 lines 3-4).

Exception 14: To the judge's conclusion that Respondent's decision not to introduce additional payroll records into evidence reflected a concession that General Counsel set forth a prima facie case that Respondent unilaterally changed employees' hours. (Decision, p. 7, lines 7-9).

Exception 15: To the judge's finding that "the alleged reductions in hours did reflect a material variation in kind and degree as to constitute a 'change' which required bargaining." (Decision, p. 7, lines 11-12).

Exception 16: To the judge's finding that "[e]mployees who generally accrued 40 hours per week and rarely if ever accrued less than 39 hours per week experienced a reduction in hours to 37.5-hour weeks and rarely if ever accrued more than 38.75 hours per week after the change." (Decision, p.7, lines 12-15).

Exception 17: To the judge's finding that "the Respondent did not effect changes at the same time and in the same manner as it had in the past." (Decision, p. 7, lines 15-16).

Exception 18: To the judge's finding that the General Counsel established a prima facie case that a change in hours occurred which was different than prior changes. (Decision, p. 7, lines 18-22).

Exception 19: To the judge's finding that "Respondent failed to rebut the General Counsel's evidence or the pattern it demonstrated." (Decision, p. 7, lines 22-23).

Exception 20: To the judge's determination to discount Montegari's testimony that Sormani's hours were reduced because Sormani changed positions. (Decision, p. 6, lines 27-30, p. 7, lines 25-29).

Exception 21: To the judge's finding that the payroll records submitted by the General Counsel established a material variation in the hours of Sormani, Abraham, and Ricarze. (Decision, p. 8, lines 6-8, fn.10).

Exception 22: To the judge's finding "the evidence sufficient to establish that a change" of Hegarty's hours occurred. (Decision, p. 8, lines 20-29).

Exception 23: To the judge's finding that Hegarty's 40-hour week was "reinstated" such that the judge suggests Hegarty's hours were changed. (Decision, p. 8, lines 31-32, p. 9, lines 1-7).

Exception 24: To the judge's conclusion that "Respondent violated Section 8(a)(5) of the Act by unilaterally reducing the hours of employees without notifying the Union and offering to bargain.") (Decision, p. 9, lines 9-11).

Exception 25: To the judge's description of and reliance on extant Board precedent regarding an employer's duty to bargain with the Union over the four (4) disciplines at issue in the case, as held by the Board in *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106 (2016). (Decision, p. 9, lines 19-29).

Exception 26: To the judge's determination that the Union's subsequent failure to request bargaining over the four (4) disciplines at issue in the case was insignificant and that the Union did not have a meaningful opportunity to bargain over the referenced discipline because the discipline was a fait accompli. (Decision, p. 9, lines 23-36).

Exception 27: To the judge's conclusion that "Respondent violated Section 8(a)(5) and (1) by disciplining employees as alleged in the complaint." (Decision, p. 9, lines 35-36).

Exception 28: To the judge's "Conclusions of Law". (Decision, p. 9, lines 38-51, p. 10, lines 1-7).

Exception 29: To the judge's stated remedies. (Decision, p. 10, lines 9-44, p. 11, lines 1-10).

Exception 30: To the judge's recommended order. (Decision, p. 11, lines 12-45, p. 12, lines 1-30).

Dated: January 17, 2019

Respectfully submitted,

s/ *Seth D. Kaufman*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of January, 2019, Respondent 800 River Road Operating Company, LLC d/b/a Care One at New Milford's Exceptions to Administrative Law Judge's Decision in the above-captioned case has been e-filed with the NLRB and has been served on the following by electronic mail:

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s/ *Seth D. Kaufman*
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